

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Eric Maurice Wright,

Petitioner,

v.

ORDER

Civil No. 10-517(MJD/FLN)

Jessica Symms - Warden,

Respondent.

This matter is before the Court upon the Petitioner's objections to the Order and Report and Recommendation of Magistrate Judge Franklin L. Noel which addressed the following *pro se* motions: 1) Certificate of Appealability [Doc. Nos. 22¹ and 26]; 2) Ex Parte Motion for Review of the Merits [Doc. No. 24]; and 3) Motion for Judicial Notice of Adjudicative Facts [Doc. No. 21].

Pursuant to statute, the Court has conducted a de novo review of the record. 28 U.S.C. § 636(b)(1); Local Rule 72.2(b). Based on that review the Court will adopt the Order and Report and Recommendation dated September 24, 2010.

In February 2010, Petitioner filed a habeas petition pursuant to 28 U.S.C. § 2254. By Order dated June 1, 2010, the Petition was dismissed as it was filed

¹The Court will treat the Petition Praying for Permission to Appeal as a motion for a certificate of appealability.

beyond the applicable statute of limitations. Thereafter, Petitioner filed an Affidavit of Cause and a Request for an Evidentiary hearing. This Court treated these submissions as a motion for relief from judgment under Fed. R. Civ. P. 60(b). That motion was denied on the basis that Petitioner had not set forth good cause to set aside the June 1, 2010 due to untimeliness.

Petitioner now moves the Court for a Certificate of Appealability. An applicant for a writ of habeas corpus may not take an appeal unless a judge issues a certificate of appealability under 28 U.S.C. § 2253(c)(1)(A); see also Fed. R. App. P. 22 (b)(1). In order for a certificate of appealability to issue, an applicant must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2). "A substantial showing is a showing that issues are debatable among reasonable jurists, a court could resolve the issues differently, or the issues deserve further proceedings." Cox v. Norris, 133 F.3d 565, 569 (8th Cir. 1997). Based on the files, records and proceedings herein, the Court finds no basis upon which to grant Petitioner a certificate of appealability in this case.

In the motion for judicial review of adjudicative facts and the motion to review the merits, Petitioner again reiterates the reasons why he believes his state court criminal conviction should be overturned. Petitioner has again failed to

demonstrate that the Court's previous rulings, that Petitioner failed to file his federal habeas petition in a timely manner, was in error.

Accordingly,

IT IS HEREBY ORDERED that:

- 1) Petitioner's Motions for a Certificate of Appealability [Doc. Nos. 22 and 26] are DENIED;
- 2) Petitioner's Motion for Judicial Notice of Adjudicative Facts [Doc. No. 21] is DENIED; and
- 3) Petitioner's Motion for Ex Parte Review of the Merits [Doc. No. 24] is DENIED.

Date: November 15, 2010

s/ Michael J. Davis
Michael J. Davis
Chief Judge
United States District Court